

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

KIMBERLY A'HEARN,)	
)	
Plaintiff,)	
)	
vs.)	No. 00-1090
)	
TARGET STORES, a division of DAYTON)	
HUDSON CORPORATION, a Minnesota)	
corporation, now known as TARGET)	
CORPORATIONS, a Minnesota corporation)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

BEFORE BYRON G. CUDMORE, U.S. MAGISTRATE JUDGE:

This cause is before the Court on Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

I. FACTS ALLEGED IN THE COMPLAINT

Defendant Target Corporation ("Target") hired Plaintiff Kimberly A'Hearn ("Plaintiff") in January 1994 to work at the Galesburg, Illinois store. During her employment, Plaintiff suffered from epilepsy, traumatic brain injury, and other conditions which required her to have medical restrictions. However, she alleges that she could perform the essential functions of numerous jobs at

Target, with or without reasonable accommodation.

On or about December 5, 1997, Plaintiff tendered the following written restrictions on her day-to-day employment duties to her store manager:

- a) a maximum of twenty (20) scheduled hours per week;
- b) avoidance of “back to back” shifts;
- c) to be allowed a set schedule of days and hours each week;
- d) that Plaintiff’s immediate supervisors write out instructions for the day;
- e) a short break every two hours to take her medications; and
- f) to honor her medical restrictions of no climbing or lifting over fifty (50) pounds.

Along with the request, Plaintiff stated that she had been suffering harassment due to her disability and physical restrictions, and sought assurances from Target, in writing, that the accommodation would be honored.

Notwithstanding the request, Target allegedly violated each of the requested accommodation and retaliated against Plaintiff for bringing these restrictions to its attention, and for subsequently filing an EEOC charge against Target. Plaintiff also alleges that Target, with malice and reckless indifference to Plaintiff’s federally protected rights, terminated Plaintiff in retaliation for the

above, and/or because she was disabled.

On December 6, 1999, the EEOC issued a right to sue letter. On March 7, 2000, Plaintiff filed this suit alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., seeking compensatory and punitive damages, along with other relief.

II. LEGAL STANDARD FOR A MOTION TO DISMISS

In ruling on a motion to dismiss, the Court must accept well pleaded allegations of the complaint as true. See Hishon v. King & Spalding, 467 U.S. 69, 104 S.Ct. 2229, 2233, 81 L.Ed.2d 59 (1984); Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1104 (7th Cir.1984), cert. denied, 470 U.S. 1054, 105 S.Ct. 1758, 84 L.Ed.2d 821 (1985). Although a complaint is not required to contain a detailed outline of the claim's basis, it nevertheless must contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory. Car Carriers, 745 F.2d at 1106. Mere conclusions, without supporting factual allegations, are insufficient to support a claim for relief. Cohen v. Illinois Inst. of Tech., 581 F.2d 658, 663 (7th Cir. 1978). Dismissal should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45

(1957).

III. DISCUSSION

Target moves to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) based on two grounds: first, Target argues that Plaintiff only alleges unsupported legal conclusions and insufficient facts to state a claim. Second, Target argues that Plaintiff failed to exhaust administrative remedies by not including some of the allegations contained in the Amended Complaint in her EEOC charge.

A. Sufficiency of the factual allegations

Target argues that this Court should dismiss the Amended Complaint because Plaintiff presents no factual allegations, but only the unsupported legal conclusions that Target failed to accommodate her, retaliated against her and terminated her in retaliation or based on her disability. Specifically, Target argues that the Amended Complaint fails to give minimal notice of:

(a) how or when she was denied accommodations; (b) the scope or nature of her retaliation and termination claims; (c) how, if at all, she was “harassed” and on what basis; and (d) what, if any, job opportunities she was denied which could support her claim for damages pursuant to § 12112(b)(5)(b). Plaintiff, in turn, argues that such detail is not needed. Although the Court agrees with

Target that Plaintiff's pleading is not a work of legal art, the Court nevertheless finds that Plaintiff has alleged sufficient facts to state a claim under the ADA.

In order for Plaintiff to recover under the ADA for an employer's failure to reasonably accommodate she must allege and show "(1) that [s]he 'was or is disabled' as defined by the Act, (2) that [her employer] was aware of this disability, and (3) that [s]he was 'qualified' for the position in question." Best v. Shell Oil Co., 107 F.3d 544, 547-48 (7th Cir. 1997). Therefore, the issue currently before the Court is whether Plaintiff has alleged all these elements of an ADA claim.

First, Plaintiff has alleged that she suffers from epilepsy, traumatic brain injury and other injuries which require her to have medical restrictions. See Complaint ¶¶ 7-8. She also alleges that she was "disabled" as defined under the ADA. See Complaint ¶ 17. Although an allegation that she was "disabled" as defined by the ADA may be a legal conclusion, the Court finds that Plaintiff has alleged sufficient facts to show that she is disabled. For example, she has identified the conditions which she suffers from, which one can easily infer that those medical conditions can substantially limit one's major life activities. As such, the Court finds that Plaintiff has sufficiently alleged the first element of an ADA claim.

With regard to the second element, Plaintiff has alleged that on December 5, 1997, she tendered medical restrictions to her store manager. See Complaint ¶ 10. This allegation is enough to infer that Target knew of her disability. Lastly, with respect to the third element, Plaintiff has alleged that she could perform the essential functions of numerous jobs at Target. See Complaint ¶ 9. Although this sentence does not specify which jobs she can perform or what essential duties those jobs contain, the Court finds that the Complaint as a whole gives sufficient notice to Target regarding the nature of Plaintiff's claim. Plaintiff has alleged that she has been working for Target since 1994, and that at all relevant times, Plaintiff suffered from the medical conditions mentioned above. This gives an inference that Plaintiff was at least capable of performing her duties up until the time she was injured and discharged.¹ As such, the Court finds that the third element is also met.

In sum, the Court finds that the Amended Complaint alleges sufficient facts to support each element of a claim under the ADA. More importantly, the Court cannot find that there exists no set of facts under which Plaintiff cannot

¹Put simply, Plaintiff is alleging that Target failed to accommodate her disability, see Complaint ¶ 13 ("Target violated each of the requested accommodations"), and retaliated against Plaintiff for asking for accommodation and for filing an EEOC charge. See Complaint ¶ 15. The Court finds that the complaint gives sufficient notice to Target regarding the bases of her claims.

prevail on her claim. Despite Target's desire for more factual allegations, the Court finds that the Rules do not require more than what has been alleged in the Amended Complaint.

Accordingly, the Court recommends that Target's first argument be rejected.

B. Exhaustion

Target next argues that Plaintiff cannot bring a claim for harassment, denial of job opportunities based on her need for reasonable accommodations and termination based on her alleged disability, because she failed to raise these claims in her administrative complaint .

As a general rule, an ADA plaintiff cannot bring claims in a lawsuit that were not included in her EEOC charge. See Alexander v. Gardner- Denver Co., 415 U.S. 36, 47, 94 S.Ct. 1011, 1019 (1974). This rule serves the dual purpose of affording the EEOC and the employer an opportunity to settle the dispute through conference, conciliation, and persuasion, id. at 44, 94 S.Ct. at 1017, and of giving the employee some warning of the conduct about which the employee is aggrieved. See Rush v. McDonald's Corp., 966 F.2d 1104, 1110 (7th Cir. 1992); Schnellbaecher v. Baskin Clothing Co., 887 F.2d 124, 127 (7th Cir. 1989). Although the rule is not jurisdictional, Zipes v. Trans World Airlines,

Inc., 455 U.S. 385, 392, 102 S.Ct. 1127, 1131(1982), it is a condition precedent with which plaintiffs must comply. See Babrocky v. Jewel Food Co., 773 F.2d 857, 864 (7th Cir. 1985). For allowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would frustrate the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charge.

Nevertheless, because most EEOC charges are completed by laypersons rather than by lawyers, a plaintiff need not allege in an EEOC charge each and every fact that combines to form the basis of each claim in her complaint. See Taylor v. Western & Southern Life Ins. Co., 966 F.2d 1188, 1195 (7th Cir. 1992). The test for determining whether an EEOC charge encompasses the claims in a complaint therefore grants the ADA plaintiff significant leeway: all ADA claims set forth in a complaint are cognizable that are " 'like or reasonably related to the allegations of the charge and growing out of such allegations.' " Jenkins v. Blue Cross Mut. Hosp. Ins., Inc., 538 F.2d 164, 167 (7th Cir. 1976) (en banc) (quoting Danner v. Phillips Petroleum Co., 447 F.2d 159, 162 (5th Cir.1971)). Thus the test of Jenkins is satisfied if there is a reasonable relationship between the allegations in the charge and the claims in the complaint, and the claim in the complaint can reasonably be

expected to grow out of an EEOC investigation of the allegations in the charge. The second part of the test is difficult to apply because it requires speculation as to what the EEOC might or might not discover in the course of an investigation.

In Plaintiff's administrative charge, which was filed while Plaintiff was still employed by Target, Plaintiff asserted that she suffered a work related injury which required her to have medical restrictions, and that Target knowingly and purposely was making her perform duties which she could not perform. Moreover, Plaintiff asserted that "[t]his kind of discrimination has been going on for quite some time. My restrictions are never met and I am required, and still required, to perform duties that I am unable to do." Further, she asserted, "I can perform the essential functions of numerous jobs at Target, and Target appears to be retaliating against me, perhaps to quit, for properly reporting my doctor's restrictions."

It is clear that the claim of harassment due to her disability, denial of job opportunities, and the termination claim were not specifically raised in the charge. Out of these three claims, the Court finds that the termination claim can be reasonably expected to grow out of the EEOC charge in this case because Plaintiff has asserted that Target was trying to make her quit. However, the harassment claim and the denial of job opportunity claims both

appear to be more problematic. There were no allegations regarding Target's conduct towards Plaintiff except for making her perform duties that she was performing prior to her injury. Moreover, Plaintiff did not assert that she applied for different positions or that Target denied her those opportunities because of her disability.

These two theories of recovery are not related to the charge Plaintiff made in the EEOC complaint. As noted before, she only alleged violations of the medical conditions she submitted (failure to accommodate), and her belief that Target was retaliating against her. In short, the Court finds that there is no relationship between the failure to accommodate her medical condition, and the claim for harassment and loss of opportunity. See, e.g., Oates v. Discovery Zone, 116 F.3d 1161, 1168 (7th Cir. 1997) (treating a harassment claim as separate from discrimination and affirming the dismissal of the harassment claim based on, inter alia, the plaintiff's failure to include it as one of the theories in the EEOC charge.) Further, the Court cannot find that EEOC would have discovered these violations in the course of its investigations into Target's alleged failure to accommodate. As such, Plaintiff's harassment claim and the loss of opportunity claim should be dismissed.

WHEREFORE, the Court recommends that Target's Motion to Dismiss (d/e 9) be denied in part and allowed in part. The Amended Complaint should

be dismissed to the extent that Plaintiff alleges discrimination based on harassment, and loss of job opportunity. In all other respects, the motion should be denied.

The parties are advised that any objection to this Report and Recommendation must be filed in writing with the Clerk of the Court within ten (10) working days after service of this Report and Recommendation. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). Failure to object will constitute a waiver of objections on appeal. Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538 (7th Cir. 1986). See also Local Rule 72.2.

The Court *sua sponte* cancels the July 11, 2000 Rule 16 hearing. Rule 16 conference reset July 20, 2000 at 11:00 a.m. in open court in Springfield.

Enter: June 21, 2000

Signature on File with Clerk

BYRON G. CUDMORE
U.S. MAGISTRATE JUDGE